

ESTTA Tracking number: **ESTTA498385**

Filing date: **10/05/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91198858
Party	Plaintiff CaseCentral, Inc.
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Date	10/05/2012
Attachments	Amended SPO v3.pdf (8 pages)(50003 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

CASECENTRAL, INC.,)	Opposition No. 91198858
)	
Opposer,)	
)	Mark: PRESERVATION CLOUD
vs.)	
)	Appl. S/N: 77/922,469
NEXTPOINT, INC.,)	Filed: January 28, 2010
)	Published: November 9, 2010
Applicant.)	

**STIPULATED ORDER AS TO PROVISIONS FOR PROTECTING
CONFIDENTIALITY OF INFORMATION REVEALED DURING BOARD
PROCEEDING**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, the parties have agreed to be bound by the terms of this order and the Trademark Trial and Appeal Board (“Board”) has ordered that the parties be bound by the provisions within. As used in this order, the term “information” covers both oral testimony and documentary material.

Agreement of the parties is indicated by the signatures of the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order.

TERMS OF ORDER

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

Confidential: Material to be shielded by the Board from public access.

Highly Confidential: Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys.

Trade Secret/Commercially Sensitive: Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review only by

outside counsel for the parties and, subject to the provisions of paragraphs 4 and 5 hereof, by independent experts or consultants for the parties.

All documents produced with the designation “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL” or “TRADE SECRET/COMMERCIALLY SENSITIVE” shall only be used for the purpose of this Opposition proceeding.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

3) Access to Protected Information.

The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the parties’ designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be retained by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of retention or obtain agreements from such individuals, in accordance with the provisions of paragraph 4 hereof.

- Parties are defined as including agents and representatives of the corporate entities that are parties to this proceeding, as well as said entities themselves.
- Attorneys for parties are defined as including in-house counsel and outside counsel, including support staff operating under counsel’s direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel’s instruction.
- Independent experts or consultants include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.

- Non-party witnesses include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Parties and their attorneys shall have access to information designated as confidential or highly confidential, subject to any agreed exceptions.

Outside counsel, but not in-house counsel, shall have access to information designated as trade secret/commercially sensitive.

Independent experts or consultants, non-party witnesses, and any other individual not otherwise specifically covered by the terms of this order may be afforded access to confidential or highly confidential information in accordance with the terms that follow in paragraph 4.

Further, independent experts or consultants may have access to trade secret/commercially sensitive information if such access is agreed to by the parties or ordered by the Board, in accordance with the terms that follow in paragraph 4 and 5.

4) Disclosure to Any Individual.

Prior to disclosure of Protected Information by any party or its attorney to any individual not already provided access to such information by the terms of this order, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any Protected Information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

5) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain Protected Information, shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board of the filing of any Protected Information not in accordance with the provisions of paragraph 12.

6) Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of

inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board of the filing of any Protected Information not in accordance with the provisions of paragraph 14.

7) Depositions.

The transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

8) Orders to Produce Protected Information

In the event that a receiving party is ordered by another court or governmental entity to produce the Protected Information of the producing party, the receiving party shall notify the producing party immediately of that order and, if same order is in writing, shall provide the producing party with a copy of said order.

9) Protected Information Revealed During Depositions

In the event that a deposition in this action is, at the request of a party, attended by a person not authorized to receive Protected Information, then any other party may have such person excluded from the deposition during any portion(s) of the examination that it reasonably believes may result in the disclosure of its Protected Information.

Documents, things, or deposition testimony requested or obtained through subpoenas to the parties or non-parties served in connection with this proceeding may be designated by the subpoenaed party or non-party as Confidential Information, Highly Confidential Information, or Trade Secret/Commercially Sensitive within the meaning of this Protective Order provided that such non-parties agree to be bound by the terms of this Protective Order and, if so, the Confidential Information, Highly Confidential Information, or Trade Secret/Commercially Sensitive Information so subpoenaed and designated shall be governed by the terms of this Protective Order.

10) Disclosure of Protected Information to Parties' Employees or Affiliates

Nothing herein shall prevent disclosure of any Confidential Information, Highly Confidential Information, or Trade Secret/Commercially Sensitive Information by the party producing such Confidential Information, Highly Confidential Information, or Trade Secret/Commercially Sensitive Information to (a) any employee or officer of the producing party or (b) any person no longer affiliated with the producing party, who

either authored, in whole or in part, or received the Confidential Information, Highly Confidential Information, or Trade Secret/Commercially Sensitive Information prior to the initiation of this Opposition.

11) Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the Protected Information, so as to maintain the confidential status of the Protected Information.

12) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the publicly available portions of these filings that discuss Protected Information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 14 of this order.

13) Handling of Protected Information.

Disclosure or use of information protected under the terms of this Order shall be only to facilitate the prosecution or defense of this Opposition. The recipient of any Protected Information disclosed in accordance with the terms of this Order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

14) Redaction; Filing Material with the Board.

When a party or attorney must file Protected Information with the Board, or a brief that discusses such information, the Protected Information or portion of the brief discussing the same should be redacted.

Protected Information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

15) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to

protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error. Upon prompt notice by the producing party showing that the information was inadvertently disclosed and designating the information confidential, the receiving party shall return the originals and all copies of the documents or things containing the Confidential Information, Highly Confidential, or Trade Secret/Commercially Sensitive Information so that the producing party may designate them as containing such information.

16) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information. The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

A challenge to the designation of information as protected must be made as soon as reasonably practicable after receipt of documents containing the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time. In any disagreement over the designation of Confidential Information, Highly Confidential, or Trade Secret/Commercially Sensitive information, the producing party bears the ultimate burden of showing that the designated information is Confidential Information, Highly Confidential, or Trade Secret/Commercially Sensitive Information. No party to this action shall be obligated to challenge the propriety of any designation, and a failure to do so shall not act as a waiver of its right to make a subsequent attack on the propriety of such designation, nor shall such failure to challenge constitute an admission that any information is, in fact, confidential.

17) Challenges to Limitations on In-House Counsel's Ability to Consider Trade Secret/Commercially Sensitive Information for Litigation Strategy Purposes.

In the event that a dispute arises concerning a party's designation of information as Trade Secret/Commercially Sensitive, due to the challenging party's desire to disclose the information at issue to its in-house counsel for the purpose of making strategic determinations regarding this matter, and the parties are unable to resolve said dispute through good faith negotiations, the party challenging the designation may make a motion before the Board seeking permission to disclose the information at issue to its in-house counsel. In the event that the Board grants such a motion, the challenging party's in-house counsel may use the information at issue only for the purposes of this matter.

The party designating information as Trade Secret/Commercially Sensitive will, when its designation is timely challenged, bear the ultimate burden of proving that the information should not be disclosed to the opposing party's in-house counsel.

18) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

The parties agree that one archival copy of evidence and briefs may be retained by counsel, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party or certify in writing the destruction of all Protected Information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which are not Work Product but which discuss or in any way refer to Protected Information.

19) Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

Any party for good cause may apply to the Board for a modification of this Protective Order.

By the signatures of their representatives affixed below, each of the parties warrants that it knowingly and willingly enters into this Stipulation.

CASECENTRAL, INC.

By: _____

William J. Frimel
Heffernan Seubert & French LLP
Attorneys for Opposer CaseCentral, Inc.

Dated: January 30, 2012

NEXTPPOINT, INC.

By: 

Title: Attorney for Applicant

Dated: March 16, 2012

Dated:

SO ORDERED:

TRADEMARK TRIAL AND APPEAL
BOARD